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EXAMINER
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LONEY, DONALD J

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANNE E. SPINKS

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Appeal 2009-013603  
Application 10/623,278  
Technology Center 1700

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Before EDWARD C. KIMLIN, BEVERLY A. FRANKLIN, and  
MARK NAGUMO, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

This is an appeal from the final rejection of claims 1-9, 12-14, and 18-20. Claims 15 and 16 have been allowed, and claims 10, 11, and 17 stand objected to. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1 and 14 are illustrative:

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1. An adsorbent composition comprising:

from 30 % by weight to 80 % by weight amorphous polyalphaolefin polymer; and

from about 20 % by weight to about 70 % by weight adsorbent selected from the group consisting of moisture adsorbents, volatile organic adsorbents, and combinations thereof,

said composition being essentially free of a film forming agent selected from the group consisting of butyl rubber, polyisobutylene and combinations thereof,

wherein said composition adsorbs at least one of moisture and volatile organic species from an atmosphere to which it is exposed.

14. An adsorbent composition comprising:

amorphous polyalphaolefin polymer; and

from about 20 % by weight to about 70 % by weight adsorbent selected from the group consisting of moisture adsorbents, volatile organic adsorbents, and combinations thereof,

said composition being essentially free of a film forming agent selected from the group consisting of butyl rubber, polyisobutylene and combinations thereof,

wherein said composition adsorbs at least one of moisture and volatile organic species from an atmosphere to which it is exposed.

The Examiner relies upon the following references in the rejection of the appealed claims (Ans. 2-3):

Kajiura	4,614,778	Sep. 30, 1986
Paeglis	5,569,516	Oct. 29, 1996
Baratuci	5,851,609	Dec. 22, 1998

Appellant's claimed invention is directed to an adsorbent composition comprising amorphous polyalphaolefin polymer and an adsorbent for moisture and/or a volatile organic. The composition is also essentially free of butyl rubber and polyisobutylene. The composition has the property of adsorbing at least one of moisture and volatile organic species from an atmosphere to which it is exposed.

Claim 14 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Baratuci. Claims 1, 2, 7, 12, 13, and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Paeglis. Claims 3-6, 8, and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Paeglis. Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Paeglis in view of the Admitted Prior Art (APA).

We have thoroughly reviewed the respective positions advanced by Appellant and the Examiner. In so doing, we find that the Examiner's rejections are not well founded.

We consider first the Examiner's § 102 rejection of claim 14 over Baratuci. We agree with Appellant that Baratuci does not describe within the meaning of § 102 a composition comprising amorphous polyalphaolefin polymer that is essentially free of butyl rubber and polyisobutylene. As set forth by Appellant, Baratuci expressly teaches that "[a]lthough isobutylene based polymers such as polyisobutylene and butyl rubber are preferred due to their low MVT, other polymers may be used instead of or in addition to isobutylene based polymers" (col. 5, ll. 56-59). The reference then discloses a list of at least 13 other polymers that includes amorphous polyalphaolefins. Consequently, in order to arrive at the claimed composition comprising amorphous polyalphaolefin polymer that is essentially free of butyl rubber

and polyisobutylene, one of ordinary skill in the art must avoid selecting the preferred isobutylene based polymers of Baratuci and then select an amorphous polyalphaolefin from a list of at least 13 polymers. In our view the level of selection required to formulate Appellant's composition does not support a description of the claimed composition within the meaning § 102. The Examiner has pointed to no example in Baratuci that discloses the claimed composition.

We now turn to the Examiner's § 102 rejection of claims 1, 2, 7, and 12-14 over Paeglis. The claimed composition has the property that it adsorbs at least one of moisture and a volatile organic from an atmosphere to which it is exposed. As emphasized by Appellant, Paeglis teaches that when plasticizer oils are included in the roofing composition, undesirable bleed-out of the oils can be reduced or eliminated by introducing oil adsorbing mineral fillers such as kaolin clay or adsorbing polymers (*see* col. 8, ll. 27-34). Hence, Paeglis teaches adsorbing fillers in the composition which adsorb plasticizer oils in the same composition. Paeglis describes no composition that is capable of adsorbing moisture or volatile organic species from an atmosphere to which it is exposed. Like Appellant, we do not subscribe to the Examiner's rationale that the composition of Paeglis' "membrane itself is part of and/or included in the atmosphere to which the composition is exposed or included therein" (Ans. 7, second para.). We agree with Appellant that an unreasonable interpretation of the claim language is required to have the adsorbing composition itself be the atmosphere to which it is exposed. We also find merit in Appellant's reasoning that if the roofing composition of Paeglis is the atmosphere to which the kaolin clay is exposed, then there is no composition that includes

the recited amount of polyalphaolefin polymer and adsorbent “because such an interpretation removes the kaolin clay from the roofing membrane composition and renders it its own composition” (App. Br. 14, second para.).

The Examiner’s § 103 rejections of claims 3-6, 8, 9 and 18-20 over Paeglis as the primary reference are not sustainable because they are based upon the faulty reasoning set forth in the § 102 rejection of claim 1 discussed above.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner’s rejections.

REVERSED

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